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5 Creditors Trust, the Summit Creditors Trust,  
6 Metropolitan Mortgage & Securities Co., Inc.,  
and Summit Securities, Inc.

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10 Counsel for Metropolitan Mortgage & Securities  
11 Co., Inc. and the Metropolitan Creditors' Trust

12 **UNITED STATES BANKRUPTCY COURT**  
13 **EASTERN DISTRICT OF WASHINGTON**

14 **In re:** ) Jointly Administered Under:  
15 ) No. 04-00757-W11

16 **METROPOLITAN MORTGAGE &** ) Chapter 11  
17 **SECURITIES CO., INC.,** )

18 Debtor. )

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19 **FINDINGS OF FACT AND**  
20 **CONCLUSIONS OF LAW RE:**  
21 **ORDER BARRING THIRD-**  
22 **PARTY CLAIMS FOR**  
23 **CONTRIBUTION OR**  
24 **INDEMNITY**

25 **In re:** )  
26 )  
27 **SUMMIT SECURITIES, INC.,** )

28 Debtor. )  
\_\_\_\_\_ )

25 **THIS MATTER** came on regularly for consideration upon the Motion filed  
26 October 23, 2006, by Metropolitan Mortgage & Securities Co., Inc.  
27 ("Metropolitan") and Summit Securities, Inc. ("Summit"), the Metropolitan

28 FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RE ORDER BARRING CLAIMS-1

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1 Creditors' Trust, and the Summit Creditors' Trust (the "Trusts") for entry of an  
2 order permanently barring persons and entities who are not parties to a Settlement  
3 Agreements entered into by the Debtors and a proposed class of purchasers of the  
4 Debtors' securities in *In re Metropolitan Securities Litigation*, No. CV-04-025-  
5 FVS (E.D. Wash.) (the "Class Action") from asserting, commencing, or continuing  
6 certain claims for contribution and indemnity against the following parties to the  
7 Settlement Agreement: Robert Bruce J. Blohowiak, B. Elaine Hoskin, Gary D.  
8 Brajcich, the Estate of Harold W. Erfurth, Reuel C. Swanson, Irv Marcus, William  
9 A. Smith, William D. Snider, John T. Trimble, Erik E. Skaggs, and Robert A. Ness  
10 (collectively hereinafter referred to as "Settling Directors and Officers"). Having  
11 made the findings of fact and conclusions of law set forth herein pursuant to  
12 Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy  
13 Rule 9014, with findings of fact to be construed as conclusions of law when  
14 appropriate, and with all capitalized terms not otherwise defined herein to be  
15 defined as set forth in the Settlement Agreement filed in connection with the  
16 Motion;

17 NOW THEREFORE, the Court makes the following Findings of Fact:

18 1. In compliance with Wash. Rev. Code § 4.22.060(1), the Debtors and  
19 Trusts properly transmitted notice of the motion for entry of the proposed bar order  
20 on all known persons with potential claims for contribution and indemnity against  
21

1 the Settling Directors and Officers and the Additional Released Parties (as that  
2 term is defined in the Settlement Agreement).  
3

4 2. A reasonable opportunity to object and be heard with respect to the  
5 Motion and the relief requested therein has been afforded to all persons served with  
6 notice.  
7

8 3. The Court has considered the reasonableness of the Settlement  
9 Agreements in accordance with the requirements of Wash. Rev. Code §  
10 4.22.060(1).  
11

12 4. The Court has considered the factors applicable under Bankruptcy  
13 Rule 9019 in assessing the fairness, reasonableness and adequacy of the Settlement  
14 Agreement. In particular, the Court has considered:  
15

- 16 • The probability of success in the litigation – the complex facts  
17 underlying the claims and the defenses that would be raised make this  
18 factor weigh in favor of finding the settlement is reasonable;
- 19 • The difficulties to be encountered in collection of the judgment – the  
20 record establishes that settlement at this juncture allows recovery of  
21 available insurance proceeds that would be exhausted through  
22 continued litigation and that recovery from other assets is unlikely;
- 23 • The complexity of the litigation and the expense, inconvenience, and  
24 delay – each of these factors militates in favor of approving the  
25 settlement as reasonable, particularly the balance of an assured  
26 recovery now as against uncertain recovery after lengthy proceedings;
- 27 • The paramount interest of the creditors and a proper deference to their  
28 reasonable views – the Court notes that the Creditors' Trusts have  
previously approved the Settlement Agreement and seek approval of  
the proposed bar order.

1       5. The Court has also considered the factors applicable under RCW  
2       4.60.060 in assessing the fairness, reasonableness and adequacy of the proposed  
3       settlement. In particular, the Court has considered:

- The releasing person's damages and the merits of the releasing person's liability theory – the facts concerning both the amount of damages and the elements of the underlying claim against the Settling Directors and Officers are complex and contested, so this factor weighs in favor of reasonableness.
- The merits of the released person's defense theory – the Settling Directors and Officers would have vigorously asserted defenses as to which the facts are complex and contested, so this factor weighs in favor of reasonableness.
- The released person's relative faults – the Settling Directors and Officers, and each of them, have been the subject of investigations by the court-appointed Examiner and the Debtors and have not been identified as having received any improper benefits from their affiliation with the Debtors, so this factor weighs in favor of reasonableness.
- The risks and expenses of continued litigation – as noted above, continued litigation would be complex, lengthy and expensive with significantly uncertain outcome.
- The released person's ability to pay – as noted above, the settlement enables the Trusts to recover from available insurance proceeds, which form the best source of recovery.
- Evidence of bad faith, collusion, or fraud – the record before the Court amply demonstrates that this settlement was the result of good faith, arm-length and contested negotiations conducted by qualified counsel.
- The extent of the releasing person's investigation and preparation of the case – Debtors and Trusts have had the benefit of an extensive investigation conducted by the Examiner appointed by this Court as well as access to the relevant records and have hired qualified counsel to assess the merits of the claim.
- The interests of the parties not being released – the non-released parties have

1 not objected to the settlement and their interests are being protected through  
2 the judgment reduction mechanisms included in this Order.

3 6. The Court's consideration of these factors leads it to conclude that the  
4 proposed settlement was entered into in good faith and is a fair, adequate and  
5 reasonable settlement of the released claims.  
6

7 WHEREFORE, having entered the foregoing Findings of Fact, the Court  
8 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the  
9 following Conclusions of Law constitute Findings of Fact, they are adopted as  
10 such.  
11

12 1. The Court has subject matter jurisdiction over the claims being  
13 released against the Settling Directors and Officers and the Additional Released  
14 Parties and the authority to determine the reasonableness of the settlement pursuant  
15 to Bankruptcy Code §§105 and 157 and Bankruptcy Rules 7016 and 9019.  
16

17 2. The factors considered by the Court in assessing the fairness,  
18 reasonableness and adequacy of the proposed settlement are factors applicable  
19 under Bankruptcy Rule 9019.  
20

21 3. The factors considered by the Court in assessing the fairness,  
22 reasonableness and adequacy of the proposed settlement are factors applicable  
23 under RCW 4.60.060.  
24

25 4. The Settlement Agreement was entered into in good faith and is a fair,  
26

1 adequate and reasonable settlement of the released claims and is sufficient to  
2 discharge the Settling Directors and Officers and the Additional Released Parties  
3 from all such claims. The Settling Directors and Officers and the Additional  
4 Released Parties are entitled to be discharged from liability from third parties for  
5 contribution or indemnification or any other claims where the claimant's injury is  
6 liability to the Debtors or the Trusts as provided under RCW 4.60.060 or any  
7 comparable statute or common law of any other state.  
8

9  
10 5. The Debtors and Trusts have shown under applicable law that an  
11 Order should be entered providing that all persons or entities who are not parties to  
12 the Settlement Agreement are permanently barred, enjoined and restrained from  
13 commencing, prosecuting or asserting any claim against the Settling Directors and  
14 Officers or the Additional Released Parties, however styled, whether legal or  
15 equitable, known or unknown, whether for indemnification or contribution or  
16 otherwise denominated (including claims for breach of contract or  
17 misrepresentation), where the claimant's injury is the claimant's liability to the  
18 Debtors or the Trust and where the claim is based on, arises out of or relates to any  
19 claims released by the Debtors and the Trusts pursuant to the Settlement  
20 Agreement, including, without limitation, any claim in which such non-settling  
21 party seeks to recover from any of the Settling Directors and Officers or the  
22 Additional Released Parties (1) any amounts that such non-settling party has paid,  
23  
24

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RE ORDER BARRING CLAIMS-6

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1 become liable to pay, or may become liable to pay in any proceeding commenced  
2 by the Debtors or the Trusts against such non-settling party based on, arising out  
3 of, or relating to claims they have released pursuant to the Settlement Agreement,  
4 or (2) any costs, expenses, or attorney fees that a non-settling party has incurred or  
5 may incur in defending against any such claim asserted against it by the Debtors or  
6 the Trusts (hereafter “Barred Claims”), and further that all Barred Claims should  
7 be extinguished, discharged, satisfied and made unenforceable.  
8  
9

10  
11 6. Because non-settling parties are barred from asserting any Barred  
12 Claims against the Settling Directors and Officers and the Additional Released  
13 Parties, any final verdict or judgment entered against non-settling parties by the  
14 Debtors or Trusts, based on claims that would have given rise to a right by such  
15 non-settling parties to assert Barred Claims but for the terms of this Order, should  
16 be reduced as determined by and provided for under the law applicable to such  
17 Barred Claims.  
18  
19

20  
21 7. If the Debtors or the Trusts obtain a settlement, judgment or verdict  
22 against a person based upon, arising out of, or relating to the claims they have  
23 released pursuant to the Settlement Agreement, and, notwithstanding the bar order  
24 which this Court has agreed to enter, that person obtains a recovery against a  
25 Settling Director or Officer or an Additional Released Party on a Barred Claim for  
26 (1) amounts that person has become liable to pay or may become liable to pay to  
27  
28

the Debtors or the Trusts and/or (2) any costs, expenses or attorney fees that person has incurred in defending such claims, then the Debtors or Trusts should reduce or credit any judgment or settlement against that person by the amount of that person's recovery against the Settling Director or Officer or the Additional Released Party, which amount should then be credited to the person's recovery against the Settling Director or Officer or the Additional Released Party.

8. If a Barred Claim is asserted against a Settling Director or Officer or an Additional Released Party in a lawsuit or arbitration proceeding in which neither the Debtors nor the Trusts are a party, it is appropriate to require that such Settling Director or Officer or Additional Released Party provide the Debtors and the Trusts with notice of the Barred Claim in writing sent to:

Maggie Lyons  
Metropolitan Creditors Trust  
Summit Creditors Trust  
12810 E. Nora, Suite D  
Spokane Valley, WA 99216

Parker C. Folse, III  
Susman Godfrey, LLP  
1201 Third Ave., Suite 3800  
Seattle, WA 98101

It is appropriate to require that such notice be provided not later than thirty (30) days after the time when the Settling Director or Officer or Additional Released Party learns of the assertion of the Barred Claim against him or her. Compliance

1 with this paragraph, where applicable by its terms, shall be a condition to the  
2 obligations of the Debtors and Trusts as described in Paragraph 7 above.  
3

4 9. The proposed bar order should be entered in the form attached to the  
5 Debtors' and Trusts' Motion as Exhibit B.  
6

7 Presented by:  
8

9 SUSMAN GODFREY L.L.P.  
10

11 /s/ Parker C. Folse, III  
12 Parker C. Folse, III, WSBA No. 24895  
13 Attorney for Metropolitan Mortgage &  
14 Securities Co., Inc., the Metropolitan  
15 Creditors' Trust, Summit Securities, Inc.,  
16 and the Summit Creditors' Trust  
17

18 DAVIDSON ♦ MEDEIROS  
19

20 /s/ Barry W. Davidson  
21 Barry W. Davidson, WSBA No. 07980  
22 Attorneys for Metropolitan Mortgage &  
23 Securities Co., Inc. and the Metropolitan  
24 Creditors' Trust  
25



26 A handwritten signature in black ink that reads "Patricia C. Williams".  
27 Patricia C. Williams  
28 Bankruptcy Judge

11/15/2006 02:46:03 PM

29 FINDINGS OF FACT AND CONCLUSIONS  
30 OF LAW RE ORDER BARRING CLAIMS-9

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